

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an application by Val and Peggy Holyoak) **FINAL ORDER**
for approval of a conditional use permit to operate a home)
occupation to host weddings and events on a 21-acre parcel) **Case No. Z0329-23-C**
at 39800 SE Thomas Road in Clackamas County, Oregon) **(Holyoak)**

I. SUMMARY

1. The applicants, Val and Peggy Holyoak, request approval of a Conditional Use Permit (“CUP”) to operate a home occupation to host weddings and other events on a 21-acre parcel located at 39800 SE Thomas Road; also known as tax lot 102, Section 12, Township 2 South, Range 4 East, of the Willamette Meridian, in Clackamas County (the “site”).

a. The site and abutting properties to the east, west, and north are zoned EFU (Exclusive Farm Use). Properties to the south are zoned TBR (Timber).

i. The majority of the site is forested. The site is currently developed with a single-family residence and a barn located in the southern half of the property, generally centered between the east and west property boundaries.

ii. The property is addressed off of SE Thomas Road, however the property is accessed by a 20-foot wide access easement that traverses the northern portion of the property to the east (40190 SE Thomas Road), where it then connects to the public portion of SE Thomas Road at the curve in the road where Thomas Road becomes SE Lusted Road.

iii. There are no mapped wetlands or streams on the site that are regulated by the Zoning and Development Ordinance (ZDO). The southern 200 to 250 feet of the property contains steep slopes (i.e. slopes greater than 20%) subject to ZDO Section 1002, but not a mass movement hazard area subject to ZDO Section 1003. No development or activities associated with the home occupation are proposed on the area with steep slopes; therefore, review of ZDO Section 1002 is not necessary.

b. The applicants propose to conduct up to 40 events per year with a maximum 200 guests per event, although the applicants state they will emphasize “micro-weddings” of 50 people or less, with an average of 75 guests per event. The dwelling and the barn will provide space for both the preparation and storage for events as well as the events themselves. On event days, the barn will be cleared out to provide space for receptions, catering areas, dance floor, music performances (DJ or small live ensembles), ceremonies, etc., with the relocated equipment returned to the barn after the end of the event. The dwelling will be used for administrative offices, restroom facilities, bride and groom staging rooms, storage for housekeeping items and dishware, and events. The

applicants proposes parking areas to provide off-street parking for 77 vehicles. With the exception of three ADA compliant spaces, all parking will be on hardy grasses.

2. Clackamas County Hearings Officer Joe Turner (the "hearings officer") held a public hearing about this application. County staff recommended the hearings officer approve the application subject to conditions. See the Staff Report to the Hearings Officer dated February 22, 2024 (the "Staff Report"). The applicants and their representatives testified in support of the application and accepted the findings and recommendations in the Staff Report without exceptions. Two persons testified in opposition to the application, including a CPO representative. The principal contested issues in the case include the following:

a. Whether the proposed use is listed as a conditional use in the EFU zone, ZDO 1203.03(A);

b. Whether the characteristics of the site are suitable for the proposed use, ZDO 1203.03(B), including:

c. Whether the transportation system is safe and adequate to serve the proposed development (ZDO 1203.01(C) and 1007);

d. Whether operation of the proposed use will "[a]lter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the underlying zoning district," ZDO 1203.01(D), specifically due to the following impacts:

i. Noise; and

ii. Increased traffic and potentially intoxicated drivers on area roads; and

e. Whether the applicants will operate the facility in compliance with the noise level limits of ZDO 806.02(J).

3. The hearings officer concludes that the applicants sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the Clackamas County Zoning and Development Ordinance (the "ZDO"), provided the applicants comply with conditions of approval recommended by County staff or warranted by the facts and law to ensure the proposed use complies in fact with those standards. Therefore the hearings officer approves the application subject to the conditions at the end of this final order, based on the findings and conclusions in this final order.

II. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at a public hearing about this application on February 29, 2024. All exhibits and records of testimony are filed at Clackamas

County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Melissa Lord summarized the Staff Report and her PowerPoint presentation.

a. She noted that the applicants propose to operate an event facility on the site utilizing the existing barn and residence. Wedding ceremonies and similar activities will take place outdoors, weather permitting. However, the receptions, dancing, and similar activities will take place within the barn. The applicants propose to hold up to 40 events per year with a maximum 200 guests per event and an average of 75 guests.

b. The applicants propose to provide 77 parking spaces on the site. The majority of parking spaces will be on grass. Four ADA spaces will be paved. ZDO 806.02(k) allows alternative surfaces, including hardy grass, for vehicle parking. The majority of events on the site will be small with a limited number of attendees, which will reduce the need for parking on the site. Grass surfaced parking will also limit the amount of impervious area on the site, leaving the land available for agricultural uses.

3. The applicants, Peggy and Val Holyoak, their son Jason Holyoak, and their attorney Charles Woodward appeared in support of the application.

a. Ms. Holyoak summarized the applicants' "purpose and vision" for the event facility.

b. Mr. Woodward accepted the findings and conditions in the Staff Report without exceptions. He noted that the applicants' performed a noise study (Attachment G of Exhibit 2b). They placed speakers inside and outside the barn and measured noise levels at the boundaries of the site. They did not record any sound levels in excess of 50 dBA. The proposed facility will not generate significant traffic volumes. The roads in the area are not unusual for rural areas of the County. The Staff Report concluded that the application complies with the applicable approval criteria.

4. Janet Davis testified on behalf of herself and as president of the Bull Run Community Association and CPO (the "CPO").

a. She lives across the river, within ½ mile of the site. She expressed concerns that noise from events on the site will be audible on her property. Neighboring residents want to be outside on summer evenings without hearing music and noise from events. Noise echoes down the Sandy River canyon.

b. The CPO Board is concerned about increased traffic generated by this use. Roads in the area are narrow, steep, and winding. There are no guardrails, streetlights, or similar safety measures. Event guests will be unfamiliar with these roads and returning

home at night, creating a hazard. Alcohol service at events may cause some guests to drive intoxicated, adding to the hazard created by these roads.

5. Ronald and Deborah Schneider objected to the application, arguing that it will conflict with the existing tranquility of the area. 70 or more cars driving to and from the site and 200 or more people attending events on the site will alter the character of the area. Noise from events on the site can be heard as far away as Bluff Road, as the river canyon carries noise up and downstream.

6. At the end of the public hearing, the hearings officer closed the record and announced his intention to approve the application subject to the conditions of approval in the Staff Report.

III. DISCUSSION

1. ZDO Section 1203.02 CONDITIONAL USES

1203.02: SUBMITTAL REQUIREMENTS

Finding: This application includes a completed land use application form, site plan, application fee, and completed supplemental application addressing the criteria in ZDO Section 1203. The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 1203.02 are included in the application. The application was submitted on August 16, 2023, and additional materials received were on December 14, 2023, and February 8, 2024. Following submission of additional requested information, the application was deemed complete on December 14, 2023.

The submittal requirements of Subsection 1203.02 are met.

1203.03 GENERAL APPROVAL CRITERIA: A conditional use requires review as a Type III application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

A. The use is listed as a conditional use in the zoning district in which the subject property is located.

Finding: The site is located in the Exclusive Farm Use (EFU) district. ZDO Section 401, Table 401-1 of the ZDO controls land uses in the underlying EFU district. Home occupation to host events, subject to Section 806, is listed as a conditional use.

Some neighbors argued that this type of event facility should not be allowed in the EFU zone. However, section 401 expressly allows such this type of use in the EFU zone, provided the use complies with all of applicable approval criteria. State law expressly authorizes the county to allow such uses in the EFU zone. *See* ORS 215.448. The decision to allow this type of use in the EFU zone was a policy choice by the Board of

County Commissioners, which the hearings officer has no authority to review or reconsider in this proceeding.

This criterion is met.

- B.** *The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.*

Finding: The site is approximately 21 acres in size and is densely treed. The proposed event area is located in the southern half of the property, and situated in the middle of the site between the east and west property lines. There is an existing barn on the site, which the applicants propose to utilize for the home occupation event facility.

There are two nearby dwellings, 40000 SE Thomas Road to the south and 40190 SE Thomas Road to the east. They are both approximately 1,200 feet away from the event area and the event operator's dwelling "as the crow flies"¹. The property to the south is situated at the bottom of a bluff along the Sandy River, nearly 150 feet in elevation lower than the proposed event venue. Similarly, the dwelling on the property to the east is nearly one-quarter of a mile away and separated by the trees located on the site. Where there are currently gaps in vegetation that separate the site from the property to the east, the applicants propose to plant trees to enhance the visual buffer between the properties. The dense trees and the location of the proposed event venue near the center of the site maximizes the separation between the events and surrounding properties.

Access to the proposed event site is provided by an existing easement that extends west from the 90-degree curve in SE Thomas Road where it intersects with SE Lusted Road. The property is approximately one mile west of the intersection of SE Ten Eyk Road and SE Thomas Road.

This criterion is met.

- C.** *The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.*

Finding: As discussed below, this application for a home occupation to host events is exempt from the concurrency requirements of ZDO 1007.07.

The hearings officer that the safety of the transportation system is adequate to serve the proposed use, based on the expert testimony of County transportation staff. (Exhibit 7). Neighbor's concerns are not sufficient to overcome the expert testimony of County transportation staff.

¹ The existing dwelling at 40000 SE Thomas Road is located approximately 1,000 feet from the proposed event venue when measured as the crow flies; however, a building permit was recently approved to replace that dwelling with a new one (reference building permit B0110023). The location of the replacement dwelling is approximately 1,200 feet from the event venue and event operator's dwelling.

This use will increase the volume of traffic on roads in the area. However, based on the expert testimony of County transportation staff, that additional traffic will not exceed the capacity of area roads or create, or exacerbate existing, hazards. The total increase in traffic volume generated by this use represents a small proportion of the existing traffic volumes on this road. As staff noted, total traffic from this use generate roughly the same traffic volume as one to two single family homes. (Exhibit 7). Event traffic will be concentrated into limited time periods, before and after events. But there is no evidence that such higher concentrations of traffic during these times will create a hazard.

Any increase in traffic will pose an increased risk for drivers, cyclists and pedestrians in the area. Higher vehicular traffic volume creates a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. But it will not substantially limit, impair or preclude the use of surrounding properties for permitted uses.

Roads in the area are narrow, steep, and windy. But those conditions are obvious and reasonably prudent drivers will observe the posted speed limit and other applicable traffic regulations. Unfortunately, not all drivers are prudent. However, there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers.

The applicants can regulate alcohol use on the site. Some attendees may bring their own alcohol or otherwise consume excessive amounts, which could create a hazard, especially if those attendees attempt to drive home. However, the applicants will have a strong interest in monitoring and enforcing limits on alcohol consumption and stopping intoxicated patrons from driving, in order to avoid legal liability. There is no evidence that this use will generate a significantly higher risk of drunk drivers than any other business that serves alcohol.

The applicants' analysis demonstrates that adequate sight distance can be provided at the site entrance onto SE Thomas Road.

This criterion is met.

D. The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.

Finding: The site is in the Exclusive Farm Use (EFU) district and is surrounded by other properties in EFU and Timber (TBR) zoning districts. Primary uses of the EFU and TBR districts are listed in ZDO Section 401 and 401, respectively. Pursuant to Subsection 806.02(E), the evaluation of compliance with Subsection 1203.03(D) shall include consideration of impacts on dwellings even though dwellings are not primary uses in this zoning district.

This criterion does not require that the use have no impacts at all. Any new use or development will alter the character of the area to some extent by modifying existing

views, generating additional traffic, installing new light sources, increasing noise, etc. The Code only prohibits impacts that *substantially* limit, impair or preclude the use of surrounding properties for the allowed primary uses, e.g. farm and forest activities. (Emphasis added). The Code does not define the word “substantially.” Therefore, the hearings officer must look to the plain and ordinary meaning of that term. *Sarti v. City of Lake Oswego*, 106 Or. App. 594, 597, 809 P.2d 701 (1991). Random House Unabridged Dictionary defines “substantial” as “*by an ample or considerable amount; quite a lot.*” “Substantial.” In Dictionary.com, Retrieved March 12, 2023, from <https://www.dictionary.com/browse/substantially>.

Due to the size of the property, the location of the event venue within the property, the topography of the area, and the existing and proposed vegetation, the hearings officer finds that the event venue will not visually limit or impair the use of surrounding properties. Moreover, the applicants are requesting to operate an event venue that specializes predominantly in micro-weddings and smaller events of fewer than 50 guests. While the applicants is seeking approval for the option to have up to 200 guests at any given event, their average number of guests will be 75. Not all event attendees will drive to the venue individually, and it is expected that there will be fewer vehicles travelling to/from the site than there are guests. The access easement serving the property does not provide vehicular access to any other property; therefore, vehicles traveling to/from the event venue will not impede the neighbor’s ability to access their own dwelling or property.

The hearings officer finds that noise generated by the proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties. The board adopted standards limiting noise from this type of use, ZDO 806.02.J. Although noise in compliance with this standard may be detectable on adjacent properties, the hearings officer finds that compliance with those adopted standards will ensure that the impacts will not substantially limit, impair or preclude the use of surrounding properties for permitted uses.

The hearings officer finds that it is feasible to comply with the noise limits in ZDO 806.02.J, based on the applicants’ noise analysis (Exhibit 2b, Attachment G) and the findings below. The proposed events will take place primarily within the existing barn on the site, which is located roughly 300 feet from the nearest property line and approximately 1,200 feet away from the nearest residences. The event area is screened by existing and proposed vegetation. The hearings officer finds that the size of the site (roughly 21 acres), the location of proposed events (primarily inside buildings located some distance from adjacent properties), combined with the dense trees will inhibit sounds traveling to adjoining properties making it feasible to comply with applicable noise standards. The hearings officer understands the topography of the Sandy River canyon south of the site can cause sounds to travel further. But the applicants is required to limit noise to a maximum 60 dBA at all boundaries of the site, which will reduce the potential for offsite noise.

The hearings officer finds that traffic generated by the proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or

precludes the use of surrounding properties. The proposed use will generate traffic immediately before and after events on the site. However, that additional traffic will not exceed the capacity of area roads or create or exacerbate existing hazards. In addition, most event traffic is likely to occur during off-peak hours, when background traffic volumes and congestion are lower.

SE Thomas and SE Lusted Roads are paved public roads and the site is accessed by an existing driveway. A condition of approval will require that the applicants pave the first 20 feet of the driveway and steep sections as necessary to meet Fire District requirements. The remainder will be a gravel driveway with a width of 20 feet. The 20-foot paved entry will limit impacts from dust or dirt generated by vehicles entering and leaving the site. The proposed events will occur a maximum of 40 times per year and will host a maximum 200 guests per event, although most events will be smaller. The property will include a parking area, suitable to accommodate up to 73 vehicles.

This criterion is met as conditioned.

E. The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.

Finding: The applicants specifically addressed the Comprehensive Plan in their submitted narrative. The site is designated Agriculture on the Comprehensive Plan map. The Exclusive Farm Use (EFU) zoning district implements the goals and policies of the Agriculture plan designation. Chapter 4, Land Use: Agriculture Polices – 4.NN of the Comprehensive Plan is applicable. The goals include preserving agricultural use of agricultural lands and maintaining agricultural economies and land.

The site is 21 acres in size and is developed with a lawfully established dwelling and barn. The applicants do not propose to construct any new buildings to support the event venue and they propose limited amounts of new pavement, thereby limiting impacts to lands that could support agricultural uses. This criterion is met.

This criterion is met.

F. The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the site is located, and Section 1000 Development Standards.

Finding: As noted above, the proposed home occupation event facility is allowed as a conditional use in the EFU zone, subject to the criteria in ZDO 401.05, 806, and applicable sections of ZDO Section 1000 Development Standards, all of which are addressed below.

This criterion is met.

2. ZDO SECTION 1000 DEVELOPMENT STANDARDS

ZDO 1203.03(F) requires compliance with “[a]ny applicable requirements of ... Section 1000 Development Standards.” The Hearings Officer finds that the applicable sections of Section 1000 are limited to ZDO 1005.04(A), 1007.07, and 1015, as these are the only criteria mentioned in ZDO 806 or 1203.03.

ZDO 806.02(I) provides:

Lighting: All lighting used during events shall comply with Subsection 1005.04(A).

ZDO 806.02(K) provides:

Parking: The home occupation shall comply with Section 1015, Parking and Loading, except as modified by Subsection 806.02(K).

ZDO 1203.03(C) provides:

The proposed use complies with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.

a. **1005.04 OUTDOOR LIGHTING**

A. *Outdoor lighting devices:*

1. *Shall be architecturally integrated with the character of the associated structures, site design, and landscape.*
2. *Shall not direct light skyward.*
3. *Shall direct downward and shield light; or direct light specifically toward walls, landscape elements, or other similar features, so that light is directed within the boundaries of the subject property;*
4. *Shall be suitable for the use they serve (e.g. bollard lights along walkways, pole mounted lights for parking lots);*
5. *Shall be compatible with the scale and intensity of uses they are serving. The height of pole-mounted fixtures shall not exceed 25 feet or the height of the tallest structure onsite, whichever is less; and*
6. *At entrances, shall be glare-free. Entrance lighting may not exceed a height of 12 feet and must be directed downward.*

Finding: The applicants proposes new outdoor lighting, thereby necessitating compliance with Section 1005.04. The applicants proposed to provide tree-mounted lights over the parking area that will not exceed 25 feet in height. The proposed light fixtures are full

cut-off and shielded downwards so that no light will be directed skyward or onto adjacent properties. A condition of approval is warranted to require that all lighting on the site comply with ZDO 1005.04(A).

The lighting standards of Section 1005.04(A) are met as conditioned.

b. **1007.07 TRANSPORTATION FACILITIES CONCURRENCY**

A. *Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.*

B. *Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:*

...

(5) *Home occupations to host events, which are approved pursuant to Section 806.*

...

Finding: The applicants are applying for a conditional use permit to operate a Home Occupation to Host Events which is a conditional use in the EFU zoning district. Under ZDO Section 1007.07(B)(5) home occupations host events are exempt from the concurrency requirements.

This criterion is inapplicable, as the use is exempt from concurrency requirements.

c. **1010 SIGNS**

Finding: Pursuant to Section 806.02(M), any signage associated with the Home Occupation to Host Events is subject to the applicable standards of Section 1010.

The applicants propose to use one temporary A-frame sign on event days, located on private property near the site entrance. Section 806.02(M) authorizes one temporary sign up to (8) square feet in area. Incidental signage on the site will direct the flow of event traffic throughout the site. This proposed incidental signage meets the standards of this section. A condition of approval is warranted to require that all signage comply with ZDO 806.02(M) and 1010.

This criterion is met as conditioned.

d. **1015 PARKING AND LOADING**

i. **1015.01 GENERAL STANDARDS**

Findings: The site is located outside the UGB. Therefore, ZDO 1015.01(A) is inapplicable and gravel surfaced parking is allowed by ZDO 1015.01(B) and ZDO 806.02(K)(2) allows alternative parking area surfaces based on the following criteria:

- a. *It is appropriate considering season, duration, and intensity of use.*
- b. *It shall be surfaced with hardy grasses, wood chips, or other similar organic materials sufficient to adequately stabilize the ground surface for parking.*
- c. *In order to minimize tracking of soil onto the roadway, a driveway surfaced with screened gravel or better must extend a minimum of 200 feet in length from the interior edge of the roadway that provides access to the subject property. A traffic management plan must direct all vehicular traffic along the required driveway prior to such traffic entering the roadway.*

The applicants state that their business will specialize in micro-weddings with fewer than 50 guests per event. Therefore, the majority of the parking spaces available onsite will seldom be used. Allowing hardy grass surfaced parking will limit the amount of land removed from potential agricultural uses. Grass surfaced parking will also limit the intensity of the use, consistent with the proposal to specialize in “micro-weddings” and events, as grass surfaced parking areas could not accommodate higher traffic volumes generated by more frequent or intensive use. The applicants should be required to demonstrate that areas proposed for parking are surfaced with hardy grasses sufficient to adequately stabilize the ground surface for parking. The existing driveway is screened gravel for a distance of more than 200 feet and the layout of the parking areas and access drive will route event traffic onto the gravel roadway. The standards of this section are met.

ZDO 1015.01(C) sets out parking and loading requirements for uses and structures not specifically listed in Tables 1015-1 through 1015-4. The proposed use, a Home Occupation to Host Events, is listed in these Tables. Therefore, ZDO 1015.01(C) is inapplicable.

Bicycle parking and loading areas are not required for this use. Therefore, ZDO 1015.01(D) is inapplicable.

The applicants did not propose to rent, lease, or assign parking on the site, use parking for storage, or for conducting business activities. A condition of approval is warranted to that effect to ensure compliance with ZDO 1015.01(E).

This criterion is met as conditioned.

ii. 1015.02 MOTOR VEHICLE PARKING AREA STANDARDS

Findings: The proposed parking areas appear to meet the standards of ZDO 1015.02(A). Vehicle parking is located in clearly defined areas of the site, east of the barn and along the access drive (1015.02(A)(1)). All parking spaces are proposed as “standard” parking spaces (8.5 feet by 16 feet), meeting the dimensional requirements of the Code (1015.02(A)(2)). No compact parking spaces are proposed (1015.02(A)(3)). With the exception of the overflow parking area labeled “18A” on the applicant’s site plan, all of the parking spaces are oriented at 90 degrees to the access aisles and the main parking area (“8” on the applicants’ site plan) is double-loaded (1015.02(A)(4) and (5)). The County can confirm compliance with the dimensional standards and the remaining parking requirements through the future development permit process required by proposed condition of approval 17, subject to the requirements of conditions of approval 20 and 21 of the Staff Report.

ZDO Table 1015-1 requires a minimum one parking space per three guests and one additional parking space for each employee for the proposed Home Occupations to Host Events facility. There is no parking maximum for this type of use. The applicants propose to allow up to 200 guests per event and up to five employees. Therefore, a minimum 72 parking space are required. The applicants proposed to provide 77 parking spaces, including three ADA accessible parking spaces, which exceeds the requirements of the Code.

Bicycle parking and loading berths are not required for this use. ZDO Tables 1015-3 and 1015-4.

This criterion is met as conditioned.

iii. 1021 SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION

Finding: This Code section is not listed as an applicable section of Section 1000 in ZDO 1203.03(F) or 806.

This criterion is inapplicable.

2. ZDO SECTION 806 HOME OCCUPATIONS TO HOST EVENTS

a. 806.02 STANDARDS

A. *Operator: The operator shall reside full-time in a lawfully established dwelling unit on the tract on which the home occupation is located.*

Finding: The applicants propose that the home occupation operators will be Val and Peggy Holyoak, who both reside full-time on the site. The dwelling was lawfully established in 1977 (building permit reference number B0031477). A condition of approval is warranted to ensure compliance with this criterion.

This criterion is met as conditioned.

- B. *Employees: The home occupation shall have no more than five employees.*

Finding: The definition of “Employee” under Section 806.01(A) is “Any on-site person, whether they work full-time or part-time in the home occupation business, including, but not limited to, the operator, partners, assistants, and any other persons or family members participating in the operation of the business. Except in the EFU, TBR, and EFU Districts, this definition does not apply to persons employed by contract to provide services for a single event, such as caterers, photographers, and florists.”

The applicants propose to have no more than five (5) employees, which is within the permissible number of employees allowed for a home occupation. The site is located within the EFU zoning district. Therefore, persons employed by contract to provide services for an event are considered “employees”, including caterers, photographers, and florists. A condition of approval is warranted to ensure compliance with this criterion.

This criterion is met as conditioned.

- C. *Type of Buildings: Notwithstanding the definition of home occupation in Section 202, Definitions, in the EFU, EFU, and TBR Districts, the home occupation shall be operated substantially in the operator’s dwelling or other buildings normally associated with uses permitted in the applicable zoning district.*

Finding: The site is within the EFU district. A portion of an existing accessory building will be used storage of event supplies and furniture. The existing barn will be used for storage of event-related items, and the remaining portion of the barn will continue to be used to store the property owner’s lawn equipment, such as the tractor, tools, and mower. The barn is customarily accessory to uses permitted in the EFU zoning district.

The original submitted application materials proposed that events would take place exclusively outdoors, on the grounds of the property. However, updated application materials submitted on February 8, 2024 (Exhibit 2b), state that wedding ceremonies may take place outside, but the reception, dancing, and meal will all take place within the barn. On event days, the existing barn will be cleared out to provide space for receptions, catering areas, dance floor, music performances (DJ or small live ensembles), ceremonies, etc., with the relocated equipment returned to the barn after the end of the event.

The operator’s dwelling will be used to manage the administrative tasks of operating the business, as well as for a “getting ready area” for events (for example, space for a bride and groom to get ready prior to a wedding ceremony). The dwelling will also be used to host events (Exhibit 2b).

The application materials reference an “apartment” within the dwelling on the site. The applicants stated the apartment will be used by their customers on event days; however, staff found no record of a lawfully established second dwelling unit. Further clarification from the applicants provides that the room is not a separate dwelling unit. Instead, it is a

room and bathroom within the primary dwelling that is interconnected to the main house. (Exhibit 2b). This land use application does not authorize the establishment of an accessory dwelling unit, nor does it recognize the existence of a second dwelling unit within the primary dwelling.

As described, the proposed events will occur substantially within the existing barn or within the existing dwelling on site. As reflected in the recommended conditions of approval, a “change of use” permit will be necessary for the dwelling and the barn prior to operating events in either of these structures.

This criterion is met as conditioned.

D. *Tents: Temporary tents are allowed as follows:*

- 1. In the EFU, EFU, and TBR Districts, temporary tents are permitted to the extent consistent with Subsection 806.02(C).*
- 2. In a zoning district other than EFU, EFU, and TBR, one temporary tent is permitted, and additional temporary tents may be permitted if consistent with Subsection 1203.03.*
- 3. Temporary tents may be placed on the subject property no more than 24 hours before the event and must be removed no more than 24 hours after the event.*

Finding: The applicants state that they will not use tents for the events.

This criterion is not applicable.

E. *In the EFU, EFU and TBR Districts, the evaluation of compliance with Subsection 1203.03(D) shall include consideration of impacts on dwellings even though dwellings are not primary uses in these zoning districts.*

Finding: The site is within the EFU district. The evaluation of compliance with Subsection 1203.03(D) is provided earlier in this Final Order. For the reasons provided above, this criterion is met.

This criterion is met.

F. *During the months of November through March, no event shall take place outside the hours of 9:00 A.M. to 10:00 P.M. During the months of April through October, no event shall take place outside the hours of 8:00 A.M. to 10:00 P.M. These time restrictions do not apply to persons involved in the set-up or clean-up of the facilities.*

Finding: The application materials state that the hours of operation for events will comply with the hours of operation allowed for in this Subsection. A condition of

approval is warranted requiring that during the months of November through March the hours of operation will be 9:00AM to 10:00PM, and during the months of April through October the hours of operation will be from 8:00AM to 10:00PM.

This criterion is met as conditioned.

G. A maximum of two events shall be allowed per day, and no more than one event shall occur at any one time. During the months of November through March, no more than five events shall be allowed per week. During the months of April through October, no more than seven events shall be allowed per week.

Finding: The applicants state that they will not host more than two events per day, and those events will not have overlapping times. They state that they will ensure that all event scheduling conforms to the standards of this Subsection. The applicants request to be authorized to host up to 40 events per year. A condition of approval is warranted to ensure compliance with this criterion.

This criterion is met as conditioned.

H. A maximum number of guests for any single event is 300. However, to the extent necessary to comply with Subsection 1203.03, a lower limit may be imposed based on site capacity constraints.

Finding: The applicants propose to host events with a maximum of 200 guests, per event, which is less than the maximum number of guests allowed by this subsection. The potential impacts of the events such as noise and the traffic analysis were evaluated with the based on the applicants' proposal that there will be up to 200 event attendees at a time, with an average attendance of 75 guests. The number of parking spaces required is also based upon the maximum number of event attendees at any given time. A condition of approval is recommended limiting the maximum number of event attendees to 200.

This criterion is met as conditioned.

I. All lighting used during events shall comply with Subsection 1005.04(A).

Finding: The lighting standards of Subsection 1005.04(A) are addressed earlier in this Final Order. The submitted application materials show four lights mounted to trees, and state that the lighting fixtures will be shielded to direct light downward. The lights will be oriented in a way the will ensure that there will be no light pollution resulting to surrounding properties.

This criterion is met as conditioned.

J. Noise shall be regulated as follows:

- 1. From 7:00 a.m. until 10:00 p.m. on Friday and Saturday and until 9:00 p.m. on all other days of the week, the average peak*

2. *An alternative to the parking area surface required pursuant to Subsection 1015.01(B) may be approved based on the following criteria:*
 - a. *It is appropriate considering season, duration, and intensity of use.*
 - b. *It shall be surfaced with hardy grasses, wood chips, or other similar organic materials sufficient to adequately stabilize the ground surface for parking.*
 - c. *In order to minimize tracking of soil onto the roadway, a driveway surfaced with screened gravel or better must extend a minimum of 200 feet in length from the interior edge of the roadway that provides access to the site. A traffic management plan must direct all vehicular traffic along the required driveway prior to such traffic entering the roadway.*

As discussed above, with the exception of paved ADA spaces, all vehicle parking will be surfaced with hardy grasses. The criteria for alternative parking surfaces are met based on the findings above.

This criterion is met as conditioned.

L. Portable restroom facilities shall:

1. *Include hand-sanitizing or hand-washing facilities;*
2. *Comply with the standards of the service provider and the applicable regulations of the Oregon Department of Environmental Quality;*
3. *Be screened from adjacent lots and rights-of-way by sight-obscuring fences or plantings; and*
4. *Be located a minimum of 50 feet from all lot lines.*

Finding: The applicants propose to use portable restroom facilities as the primary restroom facility for event guests, in addition to three permanent restrooms available in the dwelling. The portable restrooms will include hand-washing facilities. The site plan drawing provided in the application materials shows that the location of the proposed portable toilets, near the main parking area, is greater than 50 feet from property lines. The applicants is planting additional trees to enhance the few more sparsely planted areas between the site and the neighboring property to the east. The applicants have demonstrated compliance with this criterion. condition of approval is warranted to ensure continued compliance.

This criterion is met as conditioned.

- M. *One temporary sign shall be allowed in addition to signs permitted pursuant to Section 1010, Signs. The sign shall not exceed eight square feet in area; shall be placed on private property on the day of the event; shall be removed no more than 24 hours after the event; and shall be physically attached to the premises in a manner which both prevents the sign from being moved or blown from its location, and allows the prompt removal of the sign.*

Finding: Compliance with ZDO Section 1010 is addressed earlier in this Final Order. The applicants state that a temporary eight square foot event sign will be placed outside during the day of the event and will be removed no more than 24 hours after the event. The sign will be secured in order to comply with this standard. No information was provided in the application pertaining to the location of the sign and so a condition of approval is recommended to ensure the sign is located on private property and not within the right-of-way.

This criterion is met as conditioned.

- N. *Equipment, furniture, goods, and other amenities used for events shall be stored indoors on non-event days.*

Finding: The applicants state that all equipment and goods will be stored indoors on non-event days. The primary storage area will be located within an existing barn; the barn will be emptied for event days and items will be returned for storage following each event. The dwelling will be used as a secondary storage space for event items, particularly housekeeping items and dishware. This criterion can be met with a condition of approval.

This criterion is met as conditioned.

- O. *On non-event days, the use shall not take an outward appearance nor manifest any characteristics of a business or operation of a service commercial nature, except for those characteristics normally associated with or allowed for a primary use in the subject zoning district, or, in the EFU, EFU, and TBR Districts, for a use identified as “allowed” by Table 401-1, Permitted Uses in the EFU District, 401-1, Permitted Uses in the EFU District, or 401-1, Permitted Uses in the TBR District, respectively.*

Finding: The site is located in the EFU district. The applicants state that they will comply with this criterion. The application materials provide evidence that there is adequate storage space within existing structures on site that they will use to store event-related supplies (furniture, equipment, goods, etc.) which will eliminate any outward appearances of a business operation on site. In addition, the event area is not visible from the public rights of way or surrounding properties due to the location of the event area within the site and the presence of existing vegetation.

This criterion can be met with a condition of approval.

4. **ZDO SECTION 401 EFU DISTRICT**

- a. 401.04 Uses Permitted. Table 401-1 lists “Home Occupation to Host Events, subject to Section 806”.

Finding: As established in Table 401-1, a Home Occupation to Host Events is a Conditional Use and is subject to Subsection 401.05(A)(1) and 401.05(D)(1).

- b. 401.05(A)(1):

Uses may be approved only where such uses:

- a. *Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*
- b. *Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

Finding: The site is densely forested and currently developed with a dwelling and accessory buildings. The property is predominantly surrounded by properties of similar size that support small-scale farms and private residences. The site is in the EFU zoning district and is surrounded by other properties in the same district and in the Timber (TBR) district.

The applicants is not proposing to build any new structures to support the home occupation. Due to the limited average number of event attendees and the requested number of events per year, the overall impact to the surrounding area is not expected to be significant. For these reasons, and the applicants’ written narrative, the hearings officer finds that this standard is met.

This criterion is met.

- c. *401.07 Dimensional Standards.*

A. *Minimum Lot Size: New lots of record shall be a minimum of 80 acres in size, except as provided in Subsection 401.08. For the purpose of complying with the minimum lot size standard, lots of record with street frontage on County or public road rights-of-way may include the land area between the front lot line and the centerline of the County or public road right-of-way.*

B. *Minimum Front Setback: 30 feet.*

C. Minimum Side Setback: 10 feet.

D. Minimum Rear Setback: 30 feet; however, accessory buildings shall have a minimum rear setback of 10 feet. E. Modifications: Modifications to the dimensional standards are established by Sections 800, Special Uses; 903, Setback Exceptions; 1107, Property Line Adjustments; and 1205, Variances.

Finding: The site is an existing lot of record and no new lots are proposed. The existing buildings on the site comply with setback requirements and no new structures are proposed.

This criterion is met.

V. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer approves the application, Case No. Z0329-23-C (Holyoak), subject to conditions of approval.

VI. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves Case No. Z0329-23-C (Holyoak) subject to the following conditions:

1. Approval of this land use permit is based on the submitted written narrative and plans filed with the County on August 16 and additional materials received on December 14, 2023 and February 8, 2024. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. The conditional use approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). During this four year period, the approval shall be implemented, or the approval will become void. “Implemented” means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, “implemented” means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A “major development permit” is:
 - a. A building permit for a new primary structure that was part of the conditional use approval, or

- b. A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval
3. Any outdoor lighting [ZDO 1005.04(A) and (B)] and 806.02(I) shall be located and designed so that it does not shine onto adjacent properties, upwards or in rights-of-way.
4. Prior to operating the home occupation, an Authorization Notice is required under DEQ rules (OAR 340-071-0205) to change the use of a structure connected to an existing septic system. The property owner shall apply for and receive approval of an Authorization Notice to connect to an existing system. If a permit for a new septic system is needed or proposed during the review process, then a Site Evaluation is required to determine whether the property may be suitable for an onsite wastewater (septic) system. Information on the application process can be found on the Clackamas County Septic website: <https://www.clackamas.us/septic>. Questions about the process can be directed to either soilsconcern@clackamas.us or 503-742-4740.
5. Prior to operating the home occupation, the applicants must obtain a building permit for a change of use of the barn and the dwelling into the event venue. The certificate of occupancy for the change of use must be issued prior to operating events out of the buildings. Events may not occur exclusively on the lawn or in temporary tents.
6. The operators of this home occupation, Val and Peggy Holyoak, shall reside full time in the dwelling on site, and be majority owners in the business and responsible for day-to-day operations [ZDO 806.01(C) and 806.02(A)]
7. The home occupation shall have no more than five (5) full-time or part-time employees on site at any given time. "Employees" include persons employed by contract to provide services for a single event, such as caterers, photographers, and florists. [ZDO 806.02(B) and 806.01(A)]
8. During the months of November through March, no event shall take place outside the hours of 9:00 a.m. to 10:00 p.m. During the months of April through October, no event shall take place outside the hours of 8:00 a.m. to 10:00 p.m. These time restrictions do not apply to persons involved in the set-up or clean-up of the facilities [ZDO 806.02(F)]
9. A maximum of two events shall be allowed per day, and no more than one event shall occur at any one time. During the months of November through March, no more than five events shall be allowed per week. During the months of April through October, no more than seven events shall be allowed per week. The Conditional Use permit approval authorizes a maximum of 200 people per event, with an average of 75 people per event and maximum 40 events per calendar year. [ZDO 806.02(G)]
10. Noise shall be regulated as follows [ZDO 806.02(J)]:

- a. From 7:00 a.m. until 10:00 p.m. on Friday and Saturday, and until 9:00 p.m. on all other days of the week, the average peak sound pressure level of the noise shall not exceed 60 dB(A) when measured off the site. During all other hours, the average peak sound pressure level of the noise shall not exceed 50 dB(A) when measured off the site.
 - i. Noise generated by vehicles entering or exiting the site, but not by idling vehicles, shall be exempt from Subsection 806.02(J)(1)
 - ii. Subsection 806.02(J)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.
11. Restroom facilities shall be regulated as follows [ZDO 806.02(L)]:
- a. Portable restroom facilities shall include hand-sanitizing or hand-washing facilities;
 - b. Comply with the standards of the service provider and the applicable regulations of the Oregon Department of Environmental Quality;
 - c. Portable restroom facilities shall be screened from adjacent properties and rights-of-way by sight-obscuring fences or plantings; and
 - d. Shall be located a minimum of 50 feet from all lot lines.
12. One temporary sign is allowed in addition to signs permitted pursuant to Section 1010, Signs. The sign shall not exceed eight square feet in area; shall be placed on private property on the day of the event; shall be removed no more than 24 hours after the event; and shall be physically attached to the premises in a manner which both prevents the sign from being moved or blown from its location, and allows the prompt removal of the sign.
[806.02(M)]
13. On non-event days, the use shall not take an outward appearance nor manifest any characteristics of a business or operation of a service commercial nature, except for those characteristics normally associated with or allowed for a use identified as “allowed” by Table 401-1, Permitted Uses in the EFU District.
[806.02(O)]
14. Prior to operating the home occupation, the applicants shall submit a plan to the Planning and Zoning Division showing satisfaction of requirements from Section 1021 of the Zoning and Development Ordinance regarding trash/recycling, or a plan suitable to meet the standard residential pick-up service provided by the trash hauler. Detailed information, including ZDO 1021, is available on the county web site *www.clackamas.us* under “Garbage & Recycling.”

15. A minimum of 72 parking spaces are required, and must meet the parking area design standards of ZDO Section 1015.02. [ZDO 1015, Table 1015-1]. With the exception of ADA parking spaces and nine gravel parking spaces, all areas proposed for parking shall be surfaced with hardy grasses sufficient to adequately stabilize the ground surface for parking.
16. All frontage improvements in or adjacent to Clackamas County right-of-way, and all on-site access improvements, shall be in compliance with *Clackamas County Roadway Standards*.
17. The applicants shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project. The required access and parking improvements shall be completed prior to initiation of event hosting.
18. The driveway approach on SE Thomas Road serving the event site shall be paved to a minimum width of 20 feet and length of 20 feet, per Standard Drawing D500.
19. Minimum intersection sight distance of 610 feet shall be provided at the proposed driveway serving the event site on SE Thomas Road. Intersection sight distance shall be measured 14.5 feet back from the edge of pavement at a height of 3.5 feet to an object height of 3.5 feet in the center of the oncoming travel lane.
20. The applicants shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the site, as follows:
 - a. Parking spaces and drive aisles shall meet that standards of ZDO Section 1015 and Roadway Standards Drawings P100/P200. Each parking space will be required to meet minimum width and length of 8.5 feet by 16 feet, with a 24 foot drive isle width.
 - b. The main access road providing access from SE Thomas Road to the event facility site shall be surfaced with screened gravel or better and no less than 20 feet in width, constructed per Standard Drawing R100.
 - c. Access drives and parking areas within the site shall be constructed per Standard Drawing R100. Two-way drive aisles shall be a minimum of 20 feet in width. One-way drive aisles shall be a minimum of 12 feet in width.
 - d. Where the access drive exceed an average grade of 15 percent, the section of roadway exceed 15 percent shall be paved, per Roadway Standards Drawing R100.

- e. Parking spaces shall be adequately delineated. For paved surfaces, parking spaces shall be striped. For a gravel surface, wheel stops or a similar physical features shall be provided to delineate each gravel parking space.
 - f. The applicants shall provide a dimensioned site plan indicating each parking space and drive aisles.
 - g. Handicapped (ADA) parking spaces and adjacent accessible areas shall be paved with asphalt concrete or an equivalent approved by Clackamas County Engineering staff, as required by the Building Department.
 - h. Drainage facilities shall be designed and constructed in conformance with *Clackamas County Roadway Standards* Chapter 4, providing water quality treatment and conveyance to a suitable outfall.
21. Prior to the issuance of a building permit and/or site development, the applicants shall submit to Clackamas County Engineering Office:
- a. Written approval from the Clackamas Fire District #1 for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
 - c. Written approval from the Clackamas County Engineering for surface water management facilities and erosion control measures.
 - d. A set of street and site improvement construction plans, in conformance with *Clackamas County Roadway Standards* Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.
 - i. The permit will be for driveway, drainage, parking and maneuvering areas, and other site improvements.
 - ii. The minimum fee deposit is required upon submission of plans for the Development Permit. The fee will be calculated based on 8.83% of the public improvements and 5% of the onsite transportation improvements, according to the current fee schedule.
 - iii. The applicants shall have an Engineer, registered in the state of Oregon, design and stamp construction plans for all required improvements, or provide alternative plans acceptable to the Engineering Division.
22. Applicants shall specify a lawful water source for the home occupation to host events and provide a record of the water source to the Planning and Zoning Division. [1006.03(E)]

DATED this 11th day of March 2024.



Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

APPEAL RIGHTS

ZDO 1307.14(D)(6) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).